LCTX
LEAGUE CITY

AGREEMENT WITH TERRACON

(version 2-23-2024)

This AGREEMENT ("Agreement") is entered by and between **Terracon** Consultants, Inc.("Contractor"), located at **551 League City Parkway, Suite F, League City TX 77573** and **City of League City** ("City"), a municipal corporation, located at 300 W. Walker, League City, Texas 77573 on the date set forth below.

Terms:

1. **Scope of Services:** Contractor will perform the designated services and/or provided the designated products, as set forth in **Exhibit A**, which is attached and incorporated herein, and which can be generally described as **construction material testing related to the replacement of approximately 5,300 linear feet of an existing 24-inch diameter sanitary sewer force main serving the East Main Lift Station along FM 2094**. If there is a conflict between the terms of this Agreement and Exhibit A, the terms of this Agreement will prevail.

2. **Term and Termination:** This Agreement shall begin on **August 28, 2024** and shall terminate on **May 25, 2025**. This City reserves the right to terminate this Agreement for convenience upon seven (7) days- notice to the Contractor. Upon such termination, the City shall pay Contractor, at the rate set out in **Exhibit A,** for services satisfactorily performed or products satisfactorily provided up through the date of termination. Notwithstanding any provision in this Agreement to the contrary, the City will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor after the date of the termination notice that could have been avoided or mitigated by Contractor. This Agreement is eligible for **NA** renewal option(s) with a term of **NA** year.

3. **Compensation:** Contractor shall be paid for the services, as set forth in **Exhibit A**, attached and incorporated for all purposes. In no event shall the total compensation exceed **$29,980.00** during the term of this Agreement, subject to mutually agreed change orders. The City shall pay Contractor in accordance with the Texas Government Code 2251. Contractor must submit invoices for all services, which invoices must include dates of service and details of services provided. Payment for delivery of services rendered shall not be unreasonably withheld or delayed. If the City disapproves any amount submitted for payment by Contractor, the City shall give Contractor specific reasons for disapproval in writing. Upon resolution of any disputed charges, Contractor shall submit an amended invoice covering any remaining charges to the City.

4. **Insurance:** The Contractor **is** required to maintain insurance through the term of this Agreement.

   If required by the City, Contractor shall maintain Comprehensive General Liability insurance coverage of $1,000,000 per occurrence or medical malpractice insurance (whichever applies) throughout the entire term of the Agreement. If at any point during the Agreement, Contractor will enter City property, Contractor shall also maintain the following insurance: (i) Worker's Compensation coverage with statutory limits for the State of Texas, including Employers Liability coverage of $500,000 per accident; (ii) Commercial Automobile Liability coverage of $1,000,000 Combined Single Limit; (iii) for engineers and architects only: Professional Liability coverage of $2,000,000 per claim; and (iv) for builders only: Builder's Risk coverage in the amount of the construction cost, including protection against named windstorm and flood. All policies must contain a waiver of subrogation against City. Comprehensive General Liability and Commercial Automobile Liability policies must name the City as Additional Insured. Contractor shall pay all insurance deductibles and deductibles must not exceed $10,000 unless approved in advance by City.

Contractor shall provide City Certificates of Insurance evidencing these insurance requirements prior to the start of work.

5. **Independent Contractor:** Contractor is an independent contractor and is not an employee, partner, joint venture, or agent of the City. Contractor understands and agrees that he/she will not be entitled to any benefits generally available to City of League City employees. Contractor shall be responsible for all expenses necessary to carry out the services under this Agreement and shall not be reimbursed by the City for such expenses except as otherwise provided in this Agreement.

6. **Intellectual Property:** This Agreement shall be an Agreement for services and the parties intend and consider any work created as a result of this Agreement, including any and all documentation, images, products or results, to be a work for hire under federal copyright law. Ownership of the work shall belong to and remain the exclusive property of the City. The work may be edited at any time within the City's discretion. If the work would not be considered a work-for-hire under applicable law, Contractor hereby assigns, transfers, and conveys any and all rights, title and interest to City of League City, including without limitation all copyrights, patents, rights of reproduction, rights to ownership, and right to secure registrations, renewals, reissues and extensions thereof. As the sole copyright holder of the work, the City maintains and asserts the rights to use, reproduce, make derivative works from, and/or edit the Work in any form of medium, expression or technology now known or hereafter developed, at any time within the City's discretion. Contractor shall not sell, disclose or obtain any other compensation for the services provided herein. If the work is one to which the provisions of 17 U.S.C. § 106A apply, the Contractor hereby waives and appoints the City to assert on the Contractor's behalf the Contractor's moral rights or any equivalent rights regarding the form or extent of any alteration to the work (including, without limitation, removal or destruction) or the making of any derivative works based on the Work, including, without limitation, photographs, drawings or other visual reproductions of the work, in any medium, for the City's purposes.

7. **Confidentiality:** During the course of the work and/or services to be provided under this Agreement, Contractor may come in contact with confidential information of the City. Contractor agrees to treat as confidential the information or knowledge that becomes known to Contractor during performance of this Agreement and not to use, copy, or disclose such information to any third party unless authorized in writing by the City. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. Contractor shall promptly notify the City of any misuse or unauthorized disclosure of its confidential information and upon expiration of this Agreement shall return to the City all confidential information in Contractor's possession or control. Contractor shall further comply with all information security policies of the City that may apply and shall not make any press releases, public statements or advertisement referring to the services provided under this Agreement or the engagement of Contractor without the prior written approval of the City; provided however, that Contractor may retain one (1) copy of all work produced with incorporated confidential information for internal record-keeping purposes, subject to the terms of this Agreement.

8. **Warranties and Representations:** Contractor warrants and agrees that Contractor shall perform the Services and conduct all operations in conformity with all applicable federal, state, and local laws, rules, regulations, and ordinances. For any Service performed on premises owned or controlled by the City, Contractor warrants and agrees that Contractor will perform the Services in compliance with all City Rules, including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs.

9. **Licenses/Certifications:** Contractor represents and warrants that it will obtain and maintain in effect, and pay the cost of all licenses, permits or certifications that may be necessary for Contractor's performance of this Agreement. If Contractor is a business entity, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation; and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement and is authorized to execute this Agreement according to its terms on behalf of Contractor.

10. **Performance/Qualifications:** Contractor agrees and represents that Contractor has the personnel, experience, and knowledge necessary to qualify Contractor for the particular duties to be performed under this Agreement. Contractor warrants that all services performed under this Agreement shall be performed consistent with generally prevailing professional or industry standards.

11. **Conflict of Interest:** Contractor warrants, represents, and agrees that Contractor presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of the Services hereunder. Contractor further warrants and affirms that no relationship or affiliation exists between Contractor and the City that could be construed as a conflict of interest with regard to this Agreement.

12. **INDEMNIFICATION: CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY , AND EACH OF ITS DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND REASONABLE LITIGATION COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT, TO THE EXTENT THE CLAIM ARISES FROM NEGLIGENCE, WILLFUL ACT, BREACH OF CONTRACT OR VIOLATION OF LAW.**

13. **Force Majeure:** Neither the City nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

14. **Notices:** Any notice given under this contract by either party to the other may be affected either by personal delivery in writing or by mail, registered or certified postage prepaid with return receipt requested. Mailed notices shall be addressed to the addresses of the parties as they appear in the contract. Notices delivered personally shall be deemed communicated at the time of actual receipt. Mailed notice shall be deemed communicated three (3) days after mailing.

15. **Texas Family Code Child Support Certification:** Pursuant to Section 231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated, and payment may be withheld if this certification is inaccurate.

16. **State Auditor:** Contractor understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.

17. **Jurisdiction:** Any disputes under this Agreement shall be brought in a court of competent jurisdiction in Galveston, Texas and governed by Texas law.

18. **Alternative Dispute Resolution:** To the extent that Chapter 2260, Texas Government Code, is applicable to this Contract and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General Pursuant to Chapter 2260, shall be used by the City and the Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The Director of Finance of the City shall examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Contractor, (ii) neither the issuance of this Contract by the City nor any other conduct, action or inaction of any representative of the City relating to this contract constitutes or is intended to constitute a waiver of the City's or the state's sovereign immunity to suit; and (iii) the City has not waived its right to seek redress in the courts.

19. **Entire Agreement:** This Agreement contains the entire Agreement between the parties and supersedes all prior agreements, arrangements, and understanding, oral or written between the parties relating to this Agreement. This Agreement may not be modified except by mutual written agreement of the parties executed subsequent to this Agreement.

20. **Eligibility to Receive Payment:** Contractor certifies that, as a matter of State law, it is not ineligible to receive the Agreement and payments pursuant to the Agreement and acknowledges that the Agreement may be terminated, and payment withheld if this representation is inaccurate.

21. **Payment of Debt/Delinquency to State:** Contractor certifies that it is not indebted to the City of League City and is current on all taxes owed to the City of League City. Contractor agrees that any payments owing to Contractor under the Agreement may be applied directly toward any debt or delinquency that Contractor owes the City of League City regardless of when it arises, until such debt or delinquency is paid in full.

22. **Products and Materials Produced in Texas:** If Contractor will provide services under the Agreement, Contractor covenants and agrees that in performing its duties and obligations under the Agreement, it will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

23. **Risk of Loss:** If applicable, all work performed by Contractor pursuant to the Agreement will be at Contractor's exclusive risk until final and complete acceptance of the work by City. In the case of any loss or damage to the work prior to City's acceptance, such loss or damage will be Contractor's responsibility.

24. **Publicity:** Contractor shall not use City's name, logo or likeness in any press release, marketing materials or other public announcement without receiving City's prior written approval.

25. **Legal Construction/Severability:** In the event that any one or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this contract shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in it. To this end, the provisions of this contract are declared to be severable. The Parties may mutually agree to renegotiate the contract to cure such illegality/invalidity or unconstitutionality if such may be reasonably accomplished.

26. **Limitations:** The Parties are aware that there are constitutional and statutory limitations on the authority of City to enter into certain terms and conditions of the Agreement, including, but not limited to, those terms and conditions relating to liens on City's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), and terms and conditions related to the Limitations will not be binding on City except to the extent authorized by the laws and Constitution of the State of Texas.

27. **Sovereign Immunity:** Except as otherwise provided by Texas law, neither the execution of the Agreement by City nor any other conduct, action or inaction of any City representative relating to the Agreement is a waiver of sovereign immunity by City.

28. **Authority:** Contractor warrants and represents that Contractor has full power and authority to enter into and perform this Agreement and to make the grant of rights contained herein. The person signing on behalf of the City represents that he/she has authority to sign this Agreement on behalf of City.

29. **Non-Waiver:** No covenant or condition of this Agreement may be waived except by written consent of the waiving party. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party.

30. **Prohibition on Boycotting Israel:** Pursuant to Section 2270.002, Texas Government Code, by executing this Agreement Contractor verifies that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Agreement.

31. **Prohibition Against Business with Iran, Sudan or Foreign Terrorists Organizations:** Contractor warrants, covenants, and represents that Contractor is not engaged in business with Iran, Sudan, or any company identified on the list referenced in Section 2252.152, Texas Government Code.

Executed on this _____ day of _____, _____. *(date to be filled in by City Secretary)*

TERRACON CONSULTANTS, INC - "Contractor"

Jason L. Mills

Jason L. Mills, PMP

CITY OF LEAGUE CITY – "City"

_____

John Baumgartner, City Manager

Attest:

_____

Diana Stapp, City Secretary

Approved as to Form:

_____

Office of the City Attorney

Exhibit A

Scope of Services/Description of Products (9 number of pages, including this page)

See Next Page

551 W. League City Pkwy. Suite F
League City, TX 77573
P (281) 557-2900
Terracon.com

August 19, 2024

City of League City
300 W. Walker Street
League City, Texas 77573

Attn: Susan Oyler, P.E.
E:Susan.Oyler@leaguecitytx.gov

RE: Proposal for Materials Services
East Main 24" Force Main Replacement Project
2509 Marina Bay Dr.
League City, Texas
Terracon Proposal No. P91241144

Dear Ms. Oyler:

Terracon Consultants, Inc. (Terracon) is pleased to provide this Cost Estimate to City of League City for Materials Services. We understand we have been selected based on our qualifications to provide materials testing services for the referenced project. In this letter we have presented our understanding of the scope of the project, the proposed services, and the budget estimate.

1.0 Project Understanding
2.0 Scope of Services
3.0 Schedule
4.0 Compensation
5.0 Assumption and Limitations

Authorize Terracon to proceed in accordance with this proposal by issuing the agreement for services by City of League City.

Sincerely,
Terracon Consultants, Inc.

LeDarion Brown, EIT
Assistant Project Manager

Edwin Vazquez Martinez, EIT
Materials Department Manager

1.0 Project Understanding

Item	Description
Project Description	The project consists of approximately 2,700 linear feet of 24" Force Main installation from the intersection of FM 270 and Coryell St. to 2509 Marina Bay Dr. in League City, Texas.
Proposed Work	This project will consist of the following: ▪ 24" PVC Force Main ▪ 36" Steel casing with 24" Restrained Joint PVC Force Main using trenchless construction ▪ 6" and 7" Concrete paving removal and replacement ▪ 6" concrete driveway and curb

Terracon was provided with the following construction documents for preparation of this proposal:

- Drawings by ARKK Engineering dated August 2024.

A construction schedule was not provided at the time this proposal was prepared. We request the right to review the construction schedule and revise this proposal based on the schedule once it is provided.

2.0 Scope of Services

Our proposed Scope of Services consists of field and laboratory testing. These services are described in the following sections.

Scope Item	Description
Earthwork	▪ Sample backfill material. Prepare and test the samples for Atterberg Limits and percent fines.

Scope Item	Description
Cast-in-Place Concrete	▪ Sample cement-sand backfill for utility trenches, mold specimens, and perform compressive strength tests in the laboratory. ▪ Test soil samples for moisture-density relationship. ▪ Observe reinforcing steel prior to concrete placement. We will observe the rebar size, spacing and configuration. Terracon recommends we be scheduled a minimum of 24 hours prior to concrete placement. ▪ Sample and test the fresh concrete for each mix. Perform tests including slump, air content, concrete temperature, and cast test specimens. Perform compressive strength tests of concrete test cylinders cast in the field.
Project Management and Administration	▪ Attend preconstruction or preinstallation meetings. ▪ Coordinate field and laboratory testing. ▪ Communicate with Terracon Engineering Technicians, Contractor, and Owner's site representative. ▪ Review laboratory and field test reports. ▪ Monitor our budget.

2.1 Scheduling Retests

It is the responsibility of your representative to schedule retests in a like manner to scheduling our original services. Terracon shall not be held responsible for retests not performed as a result of a failure to schedule our services or any subsequent damage caused as a result of a lack of retesting.

2.2 Additional Services

If you would like us to perform additional work, please contact us and we will issue a short Supplement to Agreement form, or Supplemental Proposal, that outlines the additional work to be performed and associated fees. To authorize us to begin work, you simply return a signed copy of the Supplemental agreement.

3.0 Schedule

Terracon's services will be performed on an as-requested basis with scheduling by the Client or the client's designated representative. Terracon will not be responsible for scheduling our services and will not be responsible for tests or observations that are not performed due to failure to schedule our services on the project. Since our personnel will not be at the site on a resident basis, it will be imperative that we be advised when work is in progress. Services should be scheduled a minimum of 24 hours in advance. Scheduling personnel will be on an as-available basis which may require changes in personnel assigned to the project. For instances of short-notice requests, personnel may have to be utilized which have a higher rate than those normally assigned, and this higher cost may be passed on to the client.

All requests for services should be submitted to the League City, Texas office at the following phone number: (281) 724-5702. Services should not be scheduled through our field personnel.

We recommend the scope of work described in this proposal be provided to the person(s) responsible for scheduling our services, so they are aware of the services that are proposed.

3.1 Compass

Compass is Terracon's latest client interfacing tool and elevates the way we do business. Terracon offers you the ability to view and interact with your testing data in a new way and is committed to using innovative techniques to deliver quality projects. Construction data is viewed by geographic location in relation to your project drawings as part of our seamless project delivery system. Within Terracon Compass, you can access our projects and their associated data, including environmental and geotechnical projects.

When you open a materials project within Compass, you will see your materials tests and observations placed on a map. This geographic reference allows you to find your information by the "where", rather than the "when." Other features and advantages of Compass include:

- Filters for Date Performed, Service Type and Test Result Status and intuitive test status designations
- Augmented Testing Reports with In-Place Locations
- Deviation or Non-Conformance Summary: Image overlays to reference multiple plan pages to your test results

- Map layer options: Test results are inserted into Compass as soon as the report has been reviewed and distributed. It becomes easier than ever to view and close deviations with an option to display within a map while also showing them in a table format.
- Quicker turnaround of information and reports

Traditional methods of reporting and accessing results of your project's inspections, testing, and observations are no longer sufficient for today's construction projects. With a large number of reports generated on a single project, you now have a solution to quickly find and view specific data to make timely, informed decisions for your project.

One of Terracon Compass' greatest strengths is that we curate your projects for your future. Terracon Compass shows your team members an interactive map with locations of past and present projects to navigate geographically; or for those that prefer a tabular format, we have that option too. Either way, as you collaborate with Terracon, your team members will be able to build a library of past projects curated online through a secured login. That means a few years after completion, your team can readily find a final, signed deliverable.

3.2 Report Turnaround Time

We understand the importance of report turnaround to our clients, and we are committed to delivering test results on a timely basis as well as the following reporting standards:

- Failing tests or non-conformance items will be communicated to the designated parties prior to leaving the site and handwritten draft reports are available at the end of each day.
- Final reports with non-conformances (Deviation Reports) will be provided within 24 hours of testing. Terracon will maintain a deviation log which will be maintained electronically in our database and can be updated or emailed at any time.
- Final reports without non-conformances will be provided within five business days.
- Final laboratory test reports will be provided within two days of test completion.

4.0 Compensation

Based upon our understanding of the site, the project as summarized in Item 1.0, and our planned Scope of Services outlined in Item 2.0, our estimated fee is shown in the following table:

Fee Estimate Materials Services East Main 24- Force Main Replacement Project Terracon Proposal No. P91241144				
DESCRIPTION	RATE	QUANTITY	UNITS	TOTAL
Earthwork				
Engineering Technician	$ 54.00	320.00	hours	$ 17,280.00
Standard Proctor (ASTM D698)	$ 185.00	2.00	tests	$ 370.00
Atterberg Limits Determination (3 pt.)	$ 75.00	2.00	tests	$ 150.00
Compressive Strength of Cement Stabilized Sand	$ 175.00	1.00	tests	$ 175.00
Wash 200	$ 75.00	2.00	tests	$ 150.00
Nuclear Gauge(Equipment)	$ 85.00	40.00	days	$ 3,400.00
Vehicle Charge	$ 8.00	320.00	hour	$ 2,560.00
Sub Total				**$ 24,085.00**
Cast In Place Concrete				
Engineering Technician	$ 54.00	40.00	hours	$ 2,160.00
Compressive Strength of 6" x 12" Cylinder	$ 20.00	20.00	tests	$ 400.00
Vehicle Charge	$ 8.00	40.00	hour	$ 320.00
Sub Total				**$ 2,880.00**
Project Management / Administration / Safety				
Project Manager	$ 135.00	14.00	hours	$ 1,890.00
Project Engineer	$ 200.00	3.00	hours	$ 600.00
Administrative Staff II	$ 75.00	7.00	hours	$ 525.00
Sub Total				**$ 3,015.00**
Total				$29,980.00

- Overtime is defined as hours worked more than 8 per day, and all ours worked on weekends and holidays. Overtime rates will be 1.5 times the hourly rate quoted.
- A 4-hour minimum charge will be applied to all trips made to provide testing, observation, and consulting services. The minimum charge is not applicable for trips for sample or cylinder pick-ups.
- All labor, equipment and transportation charges are billed on a portal-to-portal basis from our office.
- You will be invoiced monthly for services performed. Terracon invoices are due within 30 days following final receipt of the invoice.
- This is a budget estimate and not a not-to-exceed price. Many factors beyond our control such as weather and the contractors schedule will dictate the final fee for our services.
- Quantities for re-tests, cancelations and stand-by-time are not included in our fee.

5.0 Assumption and Limitations

In preparing this proposal, we assumed work would occur 5 days per week and that our services would be performed on an as requested basis. Our cost estimate assumes that work occur during normal business hours. Our services will be invoiced in accordance with Item 4.0.